



King County

1200 King County
Courthouse
516 Third Avenue
Seattle, WA 98104

Meeting Agenda

King County Flood Control District

Boardmembers: Reagan Dunn, Chair; Julia Patterson, Vice Chair; Rod Dembowski; Larry Gossett; Jane Hague; Kathy Lambert; Joe McDermott, Larry Phillips; Pete von Reichbauer

2:30 PM

Monday, May 20, 2013

Room 1001

SPECIAL MEETING

1. Call to Order
2. Roll Call
3. Approval of Minutes of April 29, 2013 **page 3**

Discussion and Possible Action

4. FCD Resolution No. FCD2013-08 **page 7**

A RESOLUTION relating to the Briscoe-Desimone levee improvement project on the Green River in the city of Kent, and authorizing the chair to enter into an agreement with the city of Kent.

5. Adjournment



*Sign language and communication material in alternate formats can be arranged given sufficient notice (206-1000).
TDD Number 206-1024.*

ASSISTIVE LISTENING DEVICES AVAILABLE IN THE COUNCIL CHAMBERS.



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King County

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Courthouse
516 Third Avenue
Seattle, WA 98104

Meeting Minutes - Final

King County Flood Control District

*Boardmembers: Reagan Dunn, Chair; Julia Patterson, Vice
Chair; Rod Dembowski; Larry Gossett; Jane Hague; Kathy
Lambert; Joe McDermott, Larry Phillips; Pete von Reichbauer*

2:30 PM

Monday, April 29, 2013

Room 1001

SPECIAL MEETING

-DRAFT MINUTES-

1. **Call to Order**

The meeting was called to order at 3:53 p.m.

2. **Roll Call**

Present: 9 - Mr. Gossett, Ms. Lambert, Mr. Phillips, Ms. Patterson, Ms. Hague, Mr. von Reichbauer, Mr. Dunn, Mr. McDermott and Mr. Dembowski

3. **Approval of Minutes of special meeting of February 26, 2013**

4. **FCD Resolution No. FCD2013-03**

A RESOLUTION relating to the operations and finances of the King County Flood Control Zone District; adopting a revised 2013 annual subregional opportunity fund allocation and amending resolution FCD 2012-09.3.

On 4/29/2013, a public hearing was held and closed.

Rick Bautista, District staff, summarized his staff report.

A motion was made by Boardmember Patterson that this FCD Resolution be Passed. The motion carried by the following vote:

Yes: 8 - Mr. Gossett, Ms. Lambert, Ms. Patterson, Ms. Hague, Mr. von Reichbauer, Mr. Dunn, Mr. McDermott and Mr. Dembowski

Excused: 1 - Mr. Phillips

5. FCD Resolution No. FCD2013-05

A RESOLUTION approving a policy for reimbursement of Flood Control Zone District employees, officials and contractors for travel and District related expenses.

Rick Bautista, District staff, summarized his staff report.

Rod Kaseguma, legal counsel, answered questions of the Board and recommended additional language on Attachment A. Under SECTION 1. GENERAL on line 2, after 'employees', to insert "and persons who perform services for the District pursuant to contract". Boardmember Patterson accepted as friendly.

A motion was made by Boardmember Patterson that this FCD Resolution be Passed as Amended. The motion carried by the following vote:

Yes: 7 - Mr. Gossett, Ms. Lambert, Ms. Patterson, Ms. Hague, Mr. Dunn, Mr. McDermott and Mr. Dembowski

Excused: 2 - Mr. Phillips and Mr. von Reichbauer

6. FCD Resolution No. FCD2013-06

A RESOLUTION relating to the Briscoe-Desimone levee improvement project on the Green River in the city of Kent, and authorizing the chair to enter into a grant agreement with the State of Washington Department of Ecology.

Rick Bautista, District staff, summarized his staff report.

A motion was made by Boardmember Patterson that this FCD Resolution be Passed. The motion carried by the following vote:

Yes: 8 - Mr. Gossett, Ms. Lambert, Mr. Phillips, Ms. Patterson, Ms. Hague, Mr. Dunn, Mr. McDermott and Mr. Dembowski

Excused: 1 - Mr. von Reichbauer

7. FCD Resolution No. FCD2013-07

A RESOLUTION relating to the Reddington levee project on the Green River in the city of Auburn, and authorizing the chair to enter into an interlocal agreement with the city of Auburn for conveyance of easements related to the project.

Ms. Patterson moved Amendment 1.

Rick Bautista, District staff, summarized his staff report.

Ms. Patterson's motion carried by a voice vote.

A motion was made by Boardmember Patterson that this FCD Resolution be Passed as Amended. The motion carried by the following vote:

Yes: 9 - Mr. Gossett, Ms. Lambert, Mr. Phillips, Ms. Patterson, Ms. Hague, Mr. von Reichbauer, Mr. Dunn, Mr. McDermott and Mr. Dembowski

8. FCD Motion No. FCD13-02

A MOTION requesting development of a new Executive Director staffing model for consideration and final approval by the King County Flood Control District Board of Supervisors.

Rick Bautista, District staff, briefed the Board.

Mr. Dembowski noted typographical errors in the motion. The Clerk clarified the changes would be made.

A motion was made by Patterson that this FCD Motion be Passed as Amended. The motion carried by the following vote:

Yes: 9 - Mr. Gossett, Ms. Lambert, Mr. Phillips, Ms. Patterson, Ms. Hague, Mr. von Reichbauer, Mr. Dunn, Mr. McDermott and Mr. Dembowski

9. Adjournment

The meeting was adjourned at 4:23 p.m.

Approved this _____ day of _____.

Clerk's Signature

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KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

May 15, 2013

FCD Resolution

Proposed No. FCD2013-08.1

Sponsors

A RESOLUTION relating to the Briscoe-Desimone levee improvement project on the Green River in the city of Kent, and authorizing the chair to enter into an agreement with the city of Kent.

WHEREAS, the King County Flood Control Zone District ("District") desires to move forward on improvements to the Briscoe-Desimone levee on the Green River in the city of Kent; and

WHEREAS, construction of the levee improvement is intended to achieve levee certification on the Green River between river mile 14.3 to 17.0, right bank; and

WHEREAS, in the 2012 legislative session, the Washington state Legislature passed ESHB 6074 which appropriated \$7,000,000 to the King County Flood Control Zone District ("District") for the Briscoe-Desimone levee improvement project (river mile 14.3 to 17.0, right bank); and

WHEREAS, by Resolution FCD2013-06 the District chair was authorized to enter into a Grant Agreement (No. G1300118) with the state Department of Ecology, relating to the use of the \$7,000,000 funding authorized by ESHB 6074; and

WHEREAS, by Resolution FCD2013-02.2, the District commit to provide funding for levees at “the four outside bends of the Green River between South 200th and South 180th Streets”; and

WHEREAS, the Board of Supervisors desires to authorize the chair of the District to enter into an agreement between the King County Flood District and the city of Kent to outline the obligations and tasks of the respective jurisdictions for the implementation of the levee improvement described herein; now, therefore

BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE KING
COUNTY FLOOD CONTROL ZONE DISTRICT:

SECTION 1. The chair of the King County Flood Control Zone District is authorized to enter into the agreement between the city of Kent and the King County Flood Control District, Attachment A to this resolution.

KING COUNTY FLOOD CONTROL ZONE
DISTRICT
KING COUNTY, WASHINGTON

Reagan Dunn, Chair

ATTEST:

Anne Noris, Clerk of the Board

Attachments: A. Interlocal Agreement between Flood Control District and City of Kent

AGREEMENT FOR LEVEE CONSTRUCTION, OPERATION AND MAINTENANCE

Briscoe – Desimone Levee

River Mile 14.3 to 17.0, Right Bank

THIS AGREEMENT FOR LEVEE CONSTRUCTION, OPERATION AND MAINTENANCE (“Agreement”) of the Briscoe–Desimone Levee, River Mile 14.3 to 17.0, Right Bank (“Levee”) is entered into on the last date signed below by and between the Parties, the CITY OF KENT, a Washington municipal corporation (“City”), and KING COUNTY FLOOD CONTROL ZONE DISTRICT, a quasi-municipal corporation of the State of Washington (“District”) (collectively, the “Parties”).

RECITALS

A. King County, Washington, through the Water and Land Resources Division of the King County Department of Natural Resources and Parks (“WLRD”), as service provider to the District pursuant to an interlocal agreement with the District, operates and maintains a major portion of the Green River Levee System.

B. The Briscoe-Desimone levee (“Levee”) is a key part of the Green River levee system. The District Board of Supervisors desires to improve the Levee by constructing new floodwalls at four sites, known as Reaches 1, 2, 3 and 4, described and shown in Exhibit A (Sheet 1 of 4 and Sheet 3 of 4). The four floodwall projects will hereafter be referred to individually as “Reach “X” Project” or “Reach Project,” and collectively as “Levee Project,” “Levee Reaches,” or “Reach Projects.” The Levee Project is planned for construction from 2013 through 2015. The Reach 3 Project will be constructed first, beginning in 2013.

C. Based on a collaborative effort, presentation and request to the State Legislature in the 2012 Legislative Session, the Legislature passed ESHB 6074 relating to the 2011-2013 State Capital Budget. Section 3009 of ESHB 6074 appropriated \$7,000,000 to the District for the “Briscoe-Desimone levee improvement project”. This amount was based on the City’s estimated cost to construct the Reach 3 Project in order to meet National Flood Insurance Program accreditation standards, and allow the Federal Emergency Management Agency (“FEMA”) to verify compliance with such accreditation standards. Unless the State Legislature reappropriates the funds into the 2013-2015 biennium, the appropriation will need to be expended prior to June 30, 2013

D. Using ESHB 6074 funds, the District desires to authorize and the City desires to construct the Reach 3 Project as soon as possible, in order to provide for the safety of the residents and businesses that will be protected by this levee.

E. By Resolution FCD2013-06, adopted on April 29, 2013, the District Board of Supervisors authorized the Chair of the Board to enter into a Grant Agreement (No. G1300118) with the state Department of Ecology relating to the use of the \$7,000,000 for the Reach 3 Project (“DOE Agreement”). The DOE Agreement estimates that the cost of the Reach 3 Project will be \$7,500,000, with a maximum grant amount of \$7,000,000 and a maximum District contribution of \$500,000.

F. By Resolution FCD2013-02.2, adopted on February 26, 2013, the District Board of Supervisors declared its intent to address urgent flood risk reduction needs throughout King County and to work cooperatively with Green River cities to manage flood plain resources. In this Resolution, the District Board of Supervisors also approved funding for the Levee Project under certain conditions and requirements to be satisfied by both the City and the District

G. In Resolution FCD2013-02.2, the District Board of Supervisors did not specify a maximum funding for the Levee Project. During the District Board of Supervisors’ discussions of this Resolution, the City stated that the estimated cost of the Levee Project would be \$17,000,000. The District Board of Supervisors required changes to the design of the Levee Project floodwalls and called for additional setbacks for the Reach 1 levee. The City also stated that the required design change would add an additional \$1,000,000 to the Reach 1 Project cost, resulting in a total cost of \$18,000,000 for the Levee Project.

H. After adoption of Resolution FCD2013-02.2, the City revised its estimate for construction of the Levee Project to \$18,500,000. The District has not reviewed or analyzed this City estimate.

I. The Parties desire to enter into this Agreement to establish the terms and conditions for the Levee Project, and for all four Reach Projects.

J. By Motion FCD11-02.1, adopted on July 6, 2011, the District Board of Supervisors adopted certain levee maintenance and repair standards and requirements and addressed countywide flood protection levels, levee accreditation and certification. This Motion is applicable to the Levee Project, to the extent that the Motion is consistent with Resolution FCD2013-02.2.

AGREEMENT

Based upon the foregoing, the Parties agree as follows:

1. Incorporation of Recitals—Scope of Agreement. All recitals above are hereby incorporated and ratified as part of this Agreement. This Agreement establishes the terms and conditions for design, construction, installation, operation, maintenance and repair of improvements to the Levee and its four Reaches, as those terms are defined in the recitals above.

2. Definition of District. Unless provided otherwise in this Agreement, the term “District” hereinafter also shall include WLRD in its capacity as service provider to the District.

3. Interlocal Agreement with Tukwila. The City of Kent shall enter into an agreement with the City of Tukwila to act as lead agency for all work within the City of Tukwila.

4. Levee Design, Construction and Reimbursement.

a. The City shall design, construct and install the improvements to the Levee Project and the four Reach Projects described and depicted on **Exhibit A**, attached hereto and incorporated herein by reference in accordance with this Agreement, the DOE Agreement”, and District Resolution FCD2013-02.2 (“Resolution”) (the Resolution is attached as **Exhibit B**, which is incorporated herein by reference), as supplemented by the terms and conditions of Attachment A to **Exhibit B**, attached hereto and incorporated herein by reference. By executing this Agreement, the Parties acknowledge receipt and review of the DOE Agreement.

b. The City shall obtain and be responsible for all necessary local, state, and federal permits and approvals for the Levee Project, and shall fully comply with all applicable requirements and conditions thereof.

c. The Parties acknowledge and understand that at the effective date of this Agreement, most but not all of the estimated cost of the Levee Project is included in the District’s 2013-2018 Six-Year CIP, most but not all of the estimated cost of the Reach 3 Project is included in the District’s 2013 Budget, and the estimated cost of the Reach 1, 2 and 4 Projects is anticipated to be included in the District’s budgets for 2014 and thereafter. The District’s obligation and responsibility to provide funding for the Levee Project, including all four Reach Projects, is conditioned upon appropriation by the District Board of Supervisors of sufficient funds to finance the Levee Project and the four Reach Projects, including the Reach 3 Project in the 2013 and 2014 calendar years. If the District Board of Supervisors fails to appropriate expenditures in a District budget to reimburse the City for costs and expenses related to the Levee Project or any of the four Reach Projects, the District reserves the right to terminate this Agreement, and the City shall immediately terminate work on any and all Reach Projects; provided, that until substantial completion of a Reach Project, the District shall continue to accept and review City requests for reimbursement up to the amount of funds appropriated in an approved District budget and still available for reimbursement under the DOE Agreement or this Agreement.

d. The City’s cost and expense for the Levee Project improvements shall be reimbursed pursuant to the procedures, requirements and restrictions of paragraph 13 below.

e. The City shall obtain and convey to the District or King County any necessary easements for design or construction of or access to the Levee in the form of the standard River Protection Easement in Reference 8-P to the King County Surface Water Design Manual. These

easements shall include all of the improvements designed and built under this Agreement; all areas necessary for any temporary erosion control measures; a 15-foot maintenance/inspection corridor along the landward side of these areas; and suitable access for heavy equipment to reach all of these areas from the public roadways. All of the easements required for construction of any floodwall segment in Reaches 1 through 4 must be approved, accepted and recorded by the District before commencement of construction of such floodwall segment. The City also shall obtain and convey to the District or King County all restrictive covenants as required by the DOE Agreement for the Reach 3 Project, and as required by other state of Washington Department of Ecology agreements that provide funding for the other Reach Projects.

5. Levee Maintenance, Operation and Repair Standards. The District shall operate, maintain and repair the Levees in accordance with this Agreement, which includes **Exhibit C**, attached hereto and incorporated herein by reference, and with District general standards, requirements and policies for operation, maintenance and repair of Green River levees, as these are determined and applied by the District, provided that:

a. The District shall not be obligated to operate, maintain and repair a Levee if FEMA does not approve a risk-based approach to operation, maintenance and repair of the Levee; and

b. If the total cost of Levee operation, repair, and maintenance in the project area shown on **Exhibit A** exceeds the sum of average annual costs for the Green River levee system over the number of years this agreement has been effective, the City shall cover all costs and expenses in excess of the average. For this purpose, the average annual cost is \$95,000 per levee mile per year in 2013, to be adjusted for inflation each year thereafter. The District will provide the City with an annual report of operation, repair, and maintenance costs incurred in the project area.

6. District Review of Levee Plans and CLOMR Applications. The City shall provide to the District a schedule of the material and significant events and actions for design and bidding of each Reach Project, which events and actions shall include, but not be limited to, three design stages and the invitation to bid. The City shall submit plans and specifications for each of these three design stages to the District for review and comment. For all Levee Reaches, at least thirty (30) days before advertising an invitation to bid, the City shall submit to the District for review and comment the plans, specifications and requirements of the invitation to bid and the application (with attachments and exhibits) for a FEMA Conditional Letter of Map Revision ("CLOMR"). The District shall submit any comments within thirty (30) days of receipt of the documents.

7. Additional Activities. The District will provide enhanced monitoring of the Levee through slope stability instrumentation, and the District may seek reimbursement of the cost of such monitoring from State of Washington funding.

8. District Inspections. The District shall have the right to inspect the City's construction of the Levee Project.

9. Contracts for Levee Work. Upon execution of a contract for construction of a Reach Project, the City shall send a copy of the contract to the District.

10. Record Drawings; Retention and Review of Documents. The City shall submit to the District record drawings for each Reach Project, in a form and with detail required by the District. The City agrees to maintain documentation of all planning, design, construction and inspection of all Reach Projects sufficient to meet state audit standards for a capital project, recognizing that the costs of the Levee work are paid for in whole or in part by City, District and State of Washington funding sources, and that the City, the District and/or King County may seek recovery of costs expended from other governmental funding sources. The City agrees to maintain any additional documentation that is requested by the District. City contracts and internal documents shall be made available to the District for review and/or independent audit upon request.

11. Access; Special Use Permit. To the extent that the District's or King County's property interests require and allow, the City shall follow the District and/or King County processes for obtaining, as applicable, special use permits, consistent with King County special use permit procedures and standards, and shall obtain such permits for any City access to and construction and inspection work on the Levee. The District shall waive any applicable bond requirements. If Levee Project work involves access to and use of real property for which neither the District nor King County has real property interests or rights, the City shall be responsible for obtaining real property rights sufficient for City access to and construction and inspection of such Levee Project work, and District and WLRD access to and maintenance, operation and repair of the Levee.

12. District Costs and Expenses.

a. The total cost to the District of the four Reach Projects shall not exceed \$11,000,000, of which the District's maximum contribution toward the Reach 3 Project shall be \$500,000.

b. For the Reach 3 Project, the District shall seek reimbursement from the State of Washington funding under the DOE Agreement or from the District's maximum contribution of \$500,000 toward the Reach 3 Project. The District reimbursement shall be for all actual costs and expenses incurred by the District as of January 1, 2013 to review Reach 3 Project design and construction documents and to inspect the Reach 3 Project work.

c. For Reach Projects 1, 2 and 4, the District shall seek reimbursement from the District's maximum contribution of \$10,500,000 toward Reach Projects 1, 2 and 4, for all actual

costs and expenses incurred by the District as of January 1, 2013 to review Reach Projects 1, 2 and 4 design and construction documents and to inspect the Reach Project work.

d. For King County employees providing the services to the District described in subsections b and c above, the actual costs shall include salaries, employment benefits and administrative overhead.

13. Reimbursement of City Expenditures.

a. No more than once a month, the City shall submit requests for reimbursement of City costs and expenses incurred on or after January 1, 2013 for design, right-of-way acquisition, construction and inspection of the Reach Projects. The requests shall be in a form and shall contain information and data as is required by the District.

b. For the Reach 3 Project, the District shall review the requests to confirm that they are reimbursable and payable under the DOE Agreement and this Agreement. The District shall endeavor to complete such review within thirty (30) days of receipt of a request. For reimbursement amounts approved by the District and paid for under the DOE Agreement, the District shall send a request for such reimbursable amounts to the appropriate State department for review and approval, up to a maximum of \$7,000,000. Within thirty (30) days of receipt of State funds, the District shall forward the State funds to the City. For requests that are not reimbursable and payable under the DOE Agreement, the District shall endeavor to review such requests within thirty (30) days of receipt of the request, in order to determine whether they are reimbursable and payable under this Agreement. Any approved additional reimbursement shall not exceed a total of \$500,000, less any funds paid to the District under this Section 13, without prior authorization from the District. If there are funds remaining from the DOE grant subsequent to construction, the District shall submit a request to DOE to utilize those funds on Reaches 1, 2, and/or 4. The District shall forward the approved reimbursement to the City within forty-five (45) days of the City request.

c. For Reach Projects 1, 2 and 4, the District shall review the requests to determine whether they are reimbursable and payable under this Agreement. The District shall endeavor to complete such review within thirty (30) days of receipt of a request. Any approved reimbursement shall not exceed a total of \$10,500,000, less any funds paid to the District under Section 12.c., without prior authorization from the District.

The District shall forward the approved reimbursement to the City within forty-five (45) days of receipt of the City request.

d. The District may postpone review of a City request for reimbursement where all or any part of the request is inaccurate or incomplete. The District shall notify the City of any inaccuracies or incompleteness within thirty (30) days of receipt of the request. The City shall provide the requested information or data within thirty (30) days of the request for such

information or data. If the request is still inaccurate or incomplete in the opinion of the District, the dispute shall be resolved in accordance with paragraph 22 below. After resolution of the dispute, the District shall send a request for reimbursement to the appropriate State Department or provide reimbursement as provided in this section 13.

14. Levee Warranty. The City shall warrant the materials, work and function of a Reach Project for five (5) years after the City's acceptance of construction of the Reach Project.

15. Compliance with Laws and Regulations. The City shall be responsible for compliance with all applicable laws and regulations, and obtaining all required permits, approvals and licenses in connection with a Reach Project.

16. Impact on Other Reaches or Segments. The District and the City agree that the improvements to the Levee under this Agreement should not have a detrimental effect on other segments or reaches of the Green River levee system. The improvements to the Levee shall be deemed not to have such a detrimental effect where the improvements fully protect the conveyance capacity and storage volume of the floodplain during base flood (100-year flood) conditions, as demonstrated by compliance with King County flood hazard regulations, which are Sections 21A.24.230 through 21A.24.260 of the King County Code.

17. Duration. This Agreement shall take effect on the date on which the second party signs this Agreement, and shall remain in effect for thirty (30) years from the effective date.

18. Third Parties. This Agreement and any activities authorized hereunder shall not be construed as granting any rights or privileges to any third person or entity, or as a guarantee or warranty of protection from flooding or flood damage to any person, entity or property, and nothing contained herein shall be construed as waiving any immunity to liability to the City, the District and/or King County, granted under state statute, including Chapters 86.12 and 86.15 RCW, or as otherwise granted or provided for by law.

19. Liens and Encumbrances. The City acknowledges and agrees that it will not cause or allow any lien or encumbrance arising from or related to the Levee work authorized by this Agreement to be placed upon the real property interests of King County and the District. If such lien or encumbrance is so placed, King County and the District shall have the right to remove such lien and charge back the costs of such removal to the City.

20. Indemnification. To the maximum extent permitted by law, the City shall defend, indemnify and hold harmless the District and King County, and all of their officials, employees, principals and agents, from any and all claims, demands, suits, actions, losses, costs, reasonable attorney fees and expenses, fines, penalties and liability of any kind, including injuries to persons or damages to property, arising out of, or as a consequence of, the design and construction of the improvements to the Levee under this Agreement. As to all other obligations under this Agreement, to the maximum extent permitted by law, each Party shall defend, indemnify and

hold harmless the other Party, and all of its officials, employees, principals and agents, from any and all claims, demands, suits, actions, fines, penalties and liability of any kind, including injuries to persons or damages to property, arising out of or relating to any negligent acts, errors or omissions of the indemnifying Party and its contractors, agents, employees and representatives in performing these obligations under this Agreement. However, if any such damages and injuries to persons or property are caused by or result from the concurrent negligence of the District or its contractors, employees, agents, or representatives, and the City or its contractor or employees, agents, or representatives, each Party's obligation hereunder applies only to the extent of the negligence of such Party or its contractor or employees, agents, or representatives. This indemnification provision shall not be construed as waiving any immunity granted to the City, the District, or King County, under state statute, including chapters 86.12 and 86.15 RCW, as to any other entity.

The foregoing indemnity is specifically and expressly intended to constitute a waiver of each Party's immunity under industrial insurance, Title 51 RCW, as respects the other Party only, and only to the extent necessary to provide the indemnified Party with a full and complete indemnity of claims made by the indemnitor's employees. This waiver has been mutually negotiated.

21. Insurance. Each Party recognizes that the other is self-insured and accepts such coverage for liability arising under this Agreement. Should any Party choose not to self-insure, that Party shall maintain and keep in full force and effect a policy of general liability insurance in an amount not less than One Million Dollars (\$1,000,000) per occurrence with an additional excess liability policy of not less than Ten Million Dollars (\$10,000,000) and will provide the other Party with a certificate of insurance and additional insured endorsement that will name the other Party as an additional insured.

22. Dispute Resolution. The Parties will seek to resolve any disputes under this Agreement as follows:

a. For disputes involving cost reimbursements or payments, as provided for in paragraph 13 above, submittal of all relevant information and data to an independent Certified Public Accountant and/or a Construction Claims Consultant, if agreed upon by the Parties, for a non-binding opinion as to the responsibility.

b. If the foregoing does not result in resolution and for all other disputes, the Parties may mutually select any informal means of resolution and resort will otherwise be had to the Superior Court for King County, Washington.

c. Each Party will be responsible for its own costs and attorney's fees in connection with the dispute resolution provisions of this paragraph 22.

23. Entire Agreement; Amendment. This Agreement, together with its Exhibits A through D, represents a full recitation of the rights and responsibilities of the Parties and may be modified only in writing and upon the consent of both Parties. Should any conflict exist between the terms of this Agreement and the terms of the Exhibits, this Agreement shall control.

24. Binding Nature. The rights and duties contained in this Agreement shall inure to the benefit of and are binding upon the Parties and their respective successors in interest and assigns.

25. Notices, Communications and Documents. All communications and documents regarding this Agreement shall be sent to the Parties at the addresses listed below unless a Party gives notice of a change of address. Any written notice hereunder shall become effective three (3) business days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the address state below or such other addresses as may be hereinafter specified in writing.

26. Authority. The undersigned warrant that they have the authority duly granted by their respective legislative bodies to make and execute this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement, which shall become effective on the last date signed below.

CITY OF KENT

**KING COUNTY FLOOD CONTROL
ZONE DISTRICT**

By: _____

Suzette Cooke

Its: Mayor

By: _____

Its: Board Chair

DATE: _____

DATE: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____

City Attorney

By: _____

Legal Counsel

EXHIBIT A Sheet 1 of 4

Description of Briscoe-Desimone Levee Improvements

The Briscoe-Desimone Levee is located along the right bank (easterly side) of the Green River between S. 200th Street and S. 180th Street, (see Figure 1, Exhibit A Sheet 2 of 4). The Briscoe levee is located along the right bank of the Green River between S. 200th Street and S. 189th Street within the City of Kent. The Desimone levee is located along the right bank of the Green River between S. 189th Street and S. 180th Street in the City of Tukwila. Together these levee segments are approximately 2.7 miles in length and protect properties within the cities of Kent, Tukwila and Renton. Tilt-up style buildings (manufacturing and industrial) are located adjacent to the entire stretch of levee.

Four sections (reaches) of the levee, approximately 4,450 linear feet, don't meet slope and stability requirements and need repair to meet FEMA accreditation requirements. Reach 1 is located between RM 14.47 and 14.63 and totals 1,050 lf. Reach 2 is located between RM 15.45 and 15.57 and totals 850 lf. Reach 3 is between RM 15.98 and 16.36, totaling 2,350 lf, and Reach 4 is between RM 16.95 and 17.00 and totals 200 lf. Reaches 1, 2 and 3 are on the outside of sharp bends in the river and Reach 4 is just north of the S. 200th Street Bridge. Structural steel sheet pile walls are proposed to be installed at the back of the existing levee slope to act as a secondary levee to reduce flood risk to the cities of Kent, Tukwila and Renton and protect the large number of warehouses, manufacturing facilities and some retail establishments behind these levees. These areas are shown on Figure 2, Reach Location Map (see Exhibit A Sheet 3 of 4). In addition, large stumps and roots will be removed in areas between the four reaches along the levee where they could compromise levee stability and/or are in the construction project area.

The walls will provide a minimum of 3 feet of freeboard above the predicted 100-year flood event, (see artist rendering Exhibit A Sheet 4 of 4). This proposal allows for some re-vegetation and habitat restoration work along the river between the ordinary high water line and the trail in areas where the wall is constructed. In areas where walls are installed, benches will be constructed where feasible and native vegetation will be planted above the ordinary high water line.

EXHIBIT A Sheet 2 of 4

[Insert Figure 1 from PDF Exhibit A Sheet 2 and 3 of 4]

EXHIBIT A Sheet 3 of 4

[Insert Figure 2 from PDF Exhibit A Sheet 2 and 3 of 4]

EXHIBIT A Sheet 4 of 4

[Insert PDF Exhibit A Sheet 4 of 4]

EXHIBIT B

[District Resolution FCD2013-02.2]

ATTACHMENT A TO EXHIBIT B

SUPPLEMENTAL TERMS AND CONDITIONS—RESOLUTION 2012-02.2

1. The top of the setback levee retaining wall shall be consistent with the height of the adjoining levee sections, except as is appropriate for safety of cyclists, pedestrians and others using the trail along the top of the wall. Transitions at the ends of each wall shall provide for trail user safety and for levee erosion resistance from overtopping flows that might be concentrated around the ends of the wall and around the ends of trail user protection measures.
2. The City, or its engineering consultants, shall submit to the District a plan to provide for resiliency of the landside levee and wall in the event of overtopping. The plan shall include identification of the areas that are most susceptible to erosion, and shall propose appropriate protection measures for each of those areas. The City shall submit the plan as a recommendation for consideration and approval by the District in the Levee construction plan review process.
3. The City shall reduce and mitigate the potential for erosion. The City, or its engineering consultants, shall identify permanent or temporary strategies to minimize erosion in locations of potential erosion. The City shall submit these strategies as recommendations for consideration and approval by the District in the Levee construction plan review process.
4. If the City strategy to minimize erosion in the event of overtopping relies upon temporary erosion control measures such as sandbags, the City must commit to paying for and having on hand the materials and equipment, and access to sufficient labor, to install all temporary measures in preparation for overtopping. The City shall prepare a plan that describes the temporary measures, the staging of material and equipment, sources of labor, estimated time for installation, and specific river conditions that will trigger installation. This plan must be submitted for consideration and approval by the District in the Levee construction plan review process. The City must also prepare before October 1 each year by staging all necessary materials and equipment specified in the plan. The City must fully install all such temporary measures immediately upon recognition that the trigger conditions in the approved plan are met. The City must also remove all such temporary measures within eight weeks after flood conditions subside. The City is fully responsible for all associated costs including but not limited to materials, equipment, and labor.

5. The City shall move the setback wall back from the landward toe of the existing levee in the northernmost setback segment near the West Valley Highway, consistent with the alternate alignment described by GEI Consultants, Inc., in section 8.3.2.5 of its April, 2012 draft FEMA Accreditation Report for the Briscoe-Desimone Levee System.
6. The plan to address potential corrosion of the sheet pile walls shall be submitted for consideration and approval by the District in the Levee construction plan review process.
7. The agreement with the Washington State Department of Transportation shall be approved by the District prior to the release of State or District funds for Reach 1 of the Levee.
8. To assist in implementing the District plan for emergency repairs, the City shall provide project design information and emergency planning recommendations of observations, physical measurements, tolerances, thresholds, and considerations for the District's inspection and risk-based decision-making as appropriate for emergency plans associated with the Levee design. The City will provide this information to the District by August 1, 2014.
9. The City shall permit, design, and construct replacement of the trail to meet King County Parks regional trail standards. The City shall submit plans to King County Parks for review coincident with District plan review at each design phase.

EXHIBIT C

Levee Inspection, Maintenance, Operation and Repair

1. The Levee shall be maintained and operated consistent with the District's Flood Hazard Management Plan Policy PROJ-6, Flood Protection Facility Design and Maintenance Objectives (or its successor) which states as follows:

“[The District] should construct new flood protection facilities and maintain, repair or replace existing flood protection facilities in such a way as to:

- Require minimal maintenance over the long term,
 - Ensure that flood or channel migration risks are not transferred to other sites,
 - Protect or enhance aquatic, riparian and other critical habitats, and
 - Protect or enhance multiple beneficial uses of flood hazard area.”
2. Levee maintenance and operation shall be based on a risk-based analysis approach. If a risk-based approach is not acceptable to FEMA, and as a result FEMA fails to issue a CLOMR or LOMR for the Levee, the District shall not be obligated to operate and maintain the Levee.
 3. The upper 1/3 of the riverward slope above the OHWM may be mowed and maintained in grass cover.
 4. The Levee crest shall be maintained to provide for unimpeded vehicular access at all times, including access by heavy construction equipment and earth-hauling machinery.
 5. The landward Levee slope may be mowed and maintained in grass cover.
 6. The 15-foot maintenance access and inspection area along the landward Levee toe may be mowed and maintained in grass cover.
 7. All such mowed areas may alternatively be planted and maintained with native riparian woody vegetation.
 8. Upon acceptance of completed Levee construction by the District, the Levee, as constructed to these standards, shall be inspected by the District prior to leaf emergence each spring, at low-flow conditions in the late Summer or early Fall, prior to the onset of

fall rains and seasonal high flows, and during and immediately following flood events at Phase III (9,000 cfs) or greater.

9. All structural features of the Levee shall be inspected by the District for deterioration or damage, including the presence of any slope erosion, washouts, slumping, slides, or sloughing, and any conditions noted shall be included in prioritization of District and/or King County maintenance and repair needs, and in performance of maintenance and repair actions at the earliest appropriate opportunity.
10. All vegetation on the levee slopes, benches, or along the lower embankment shall be inspected by the District for erosion of the riverward embankment in the root zone, and appropriate corrective action shall be taken where such conditions may be present.
11. The District and/or King County shall perform continuing levee patrols during all Phase III or greater flood events.
12. Damaged or impaired Levee conditions observed by the District during flood patrols shall be evaluated for emergency repair actions.
13. Any emergency repairs performed will be inspected by the District at the next low-water period for evaluation of permanent repair needs or additional measures required to restore the function and integrity of all affected locations.
14. The District and/or King County shall prioritize repairs consistent with the adopted policies of the District's Flood Hazard Management Plan, or its successor.
15. The City shall be responsible for all local drainage inspections and maintenance. The District and King County shall not assume any responsibility for stormwater management activities.



Executive Committee

Staff Report

Agenda Item:	4	Name:	Rick Bautista
Proposed No.:	FCD2013-08	Date:	May 20, 2013

SUBJECT

A RESOLUTION authorizing the chair to enter into a grant agreement with the city of Kent, relating to the Briscoe-Desimone Levee improvement project on the Green River.

SUMMARY

The proposed agreement:

- Sets a project scope that covers all four Reaches of the Briscoe-Desimone on the right (eastern) bank of the Green River between River Miles (RM) 14.3-17.00 in the cities of Kent and Tukwila,
- Outlines the respective obligations of each jurisdiction as to design and construction (Kent) and inspection and maintenance (District),
- Sets a maximum budget of \$18,000,000 for the project, subject to the recognition that the implementation of the project will require the allocation of fund for the 2014 District budget,
- Requires a final levee design that complies with District Resolution FCD2013-02, which set specific conditions relating to design and construction of the Briscoe-Desimone Levee improvement project,
- Outlines how reimbursements to the City are to be processed, and
- Requires t City of Kent to enter into a separate interlocal agreement with the City of Tukwila for improvements to be constructed within Tukwila.

BACKGROUND

Briscoe and Desimone Levees

The Briscoe and Desimone levees are aging earthen levees with over-steepened slopes, a levee crest less than 12 feet wide, and toe scour protection that is generally missing or inadequate. The adjoining river channel lacks adequate in-stream and aquatic edge habitat structure, such as deep pools, large woody debris, and overhanging cover.

While originally built to provide flood risk reduction to farmland in the Kent Valley, these aging levees now protect \$2.8 billion worth of urban structures and contents. A levee breach or overtopping in this location would have serious implications including threats to public safety, damage to public infrastructure, impacts on the regional economy, and damage to private structures (including homes and businesses). Single-flood damage estimates for a failure of containment by these levees exceed \$830 million. The economic disruption to the valley would be measured in years. Businesses with expensive and difficult to relocate or replace industrial machinery are particularly at risk.

Because of these significant risks, improvements to this levee segment are a very high priority to the City of Kent and the King County Flood Control District.

State DOE Grant Funding

In the 2012 Legislative Session, the Legislature passed ESHB 6074 appropriating \$7 million to the King County Flood Control Zone District for the Briscoe-Desimone Levee improvement project on the Green River in the City of Kent. The District Board of Supervisors approved this grant agreement at its April 29, 2013 meeting.

Resolution FCD2013-02

Under Resolution FCD2013-02.2, adopted on February 26, 2013, the District declared its intent to address urgent flood risk reduction needs throughout King County and to work cooperatively with Green River cities to manage flood plain resources. In this Resolution, the District Board of Supervisors also approved funding for the Levee Project under certain conditions and requirements to be satisfied by both the City and the District

The Resolution did not specify a maximum funding for the Levee Project. During the discussions of this Resolution, the City stated that the estimated cost of the Levee Project would be \$17,000,000. The District Board of Supervisors required changes to the design of the Levee Project floodwalls and called for additional setbacks for the Reach 1 levee. At that time, the City estimated that the required design change would add an additional \$1,000,000 to the Reach 1 Project cost, resulting in an estimated total cost of \$18,000,000 for the Levee Project.

ANALYSIS

- The proposed ILA was developed with input received from Kent, the County Water and Land Resources Division, the District's legal counsel and Executive Committee member staff.
- The City of Kent Public Works Committee recommended approval of the agreement, in the form recommended by the District Executive Committee, on May 6th.

AMENDMENTS

None

ATTACHMENTS

1. Resolution FCD2013-08, with attachment A (Interlocal Agreement)